

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
JOHN E. WALL, JR.,	)	FOIA Control No. 2005-586
	)	
On Request for Inspection of Records	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** February 7, 2007**Released:** February 9, 2007

By the Commission:

1. The Commission has before it an application for review<sup>1</sup> filed by John E. Wall, Jr. of the denial by the Wireline Competition Bureau (WCB) of his Freedom of Information Act (FOIA) request.<sup>2</sup> Pursuant to FOIA Exemption 4, 5 U.S.C. § 552(b)(4), we deny the application for review.

2. Wall's FOIA request sought "[a]ll supporting worksheets and FCC Form 499-A filings made by MCI/WorldCom for the years 1995 to present."<sup>3</sup> Under section 54.711(b) of our rules, "Contributors [to universal service support programs] may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted."<sup>4</sup> MCI sought confidential treatment of its filings, and therefore WCB sought comment by MCI, Inc. concerning the FOIA request.<sup>5</sup> MCI opposed Wall's FOIA request to the extent it sought "disclosure of any of the financial information" in the worksheets and Form 499-A filings because such information is considered privileged and confidential under FOIA Exemption 4, 5 U.S.C. § 552(b)(4).<sup>6</sup> Wall replied, claiming "there would be no competitive advantage provided to any competitor" by releasing the records, and that it is in the interest of MCI customers to know how much MCI contributed to the USF.<sup>7</sup> WCB then denied Wall's FOIA request, finding that the information on MCI's worksheet "could be used to determine

<sup>1</sup> Letter from John E. Wall, Jr., Law Offices of John E. Wall, Jr., to Office of General Counsel, FOIA Control No. 2006-037 (Jan. 20, 2006) (AFR).

<sup>2</sup> E-mail from John E. Wall, Jr., to FOIA@fcc.gov (Sept. 15, 2005).

<sup>3</sup> *Id.* FCC Form 499-A is the Telecommunications Reporting Worksheet and is used to determine universal service support obligations. See <http://www.fcc.gov/Forms/Form499-A/499a-2005.pdf>.

<sup>4</sup> 47 C.F.R. § 54.711(b) (citing 47 C.F.R. §0.459).

<sup>5</sup> See 47 C.F.R. § 0.461(d)(3) (requiring the Commission to seek comment from submitter of materials for which a FOIA request is made and the submitter's request for confidentiality is pending).

<sup>6</sup> Letter from Jeffrey W. Jacobs, Associate Counsel, MCI, to Managing Director (Oct. 13, 2005) (MCI Response).

<sup>7</sup> Letter from John E. Wall, Jr. to Managing Director (Dec. 8, 2005). Although the original FOIA request in this matter (*supra* footnote 2) was filed by Wall in his name only, Wall begins his December 8 letter by stating that he "write[s] on behalf of Richard H. Drew and all others similarly situated who are requesting the form 499-A filings and supporting worksheets." If Drew, *et al.*, were the true FOIA requesters, as the December 8 letter suggests, the initial FOIA request should have so indicated. We accordingly consider the FOIA request to have been filed by Wall in his personal capacity. See 47 C.F.R. § 0.461(a)(1), (a)(2) and (b)(1) (all referring to "the person requesting" the records).

growth and placement of competitive lines of business, and general market segmentation and positioning.”<sup>8</sup> Wall sought review of WCB’s decision.<sup>9</sup> Verizon Business (MCI’s successor in interest) filed a response to the AFR.<sup>10</sup> Wall did not reply to Verizon Business’s response.

3. We conclude that the records sought by Wall may be withheld pursuant to FOIA Exemption 4.<sup>11</sup> This FOIA exemption permits us to withhold commercial or financial information obtained from a person that is privileged or confidential.<sup>12</sup> We previously discussed the confidentiality of records relating to USF contributions in *Lakin Law Firm, P.C.*, 19 FCC Rcd 12727 (2004). We explained that “USF contributions of a carrier, when combined with other publicly available information, would enable competitors to estimate carrier revenues for specific product families, particular companies, and geographic areas, giving competitors a substantial competitive advantage.”<sup>13</sup> WCB’s *FOIA Decision* is consistent with *Lakin* and past FOIA decisions concerning USF contributions.<sup>14</sup> Moreover, we agree that Verizon Business has demonstrated that substantial competitive harm would likely result from the disclosure of the requested records. Verizon Business explained that the information sought would result in competitive harm by enabling competitors to identify demand for individual types of services, thereby targeting facility construction and service marketing to the detriment of Verizon Business.<sup>15</sup> This type of competitive harm has been recognized as the basis for withholding records under FOIA Exemption 4.<sup>16</sup> Verizon Business also explained that this information is kept confidential by the company,<sup>17</sup> and was not filed publicly in the MCI bankruptcy, as Wall asserted.<sup>18</sup> Based on this record, we conclude that WCB’s decision to withhold the records was consistent with FOIA Exemption 4 and our decision in *Lakin*.

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<sup>8</sup> Letter from Joseph T. Hall, Ass’t Bureau Chief, Management, WCB to John E. Wall, Jr. (Dec. 21, 2005) (*FOIA Decision*) at 3.

<sup>9</sup> Letter from John E. Wall, Jr. to Sam Feder, General Counsel (Jan. 20, 2006) (AFR).

<sup>10</sup> Letter from Kathleen Grillo, Vice President, Federal Regulatory, Verizon to Laurence H. Schecker, Attorney-Adviser, Office of General Counsel (Feb. 24, 2006) (Verizon Business Reply). The reply noted that on January 6, 2006, MCI, Inc. merged into MCI, LLC, a wholly owned subsidiary of Verizon Communications, Inc. MCI business units and certain other Verizon business units that serve enterprise and government customers are now called Verizon Business. MCI business units serving customer residential and small business customers continue to operate under the name MCI. The reply was filed on behalf of Verizon Business, and therefore we will refer to that name.

<sup>11</sup> 5 U.S.C. §552(b)(4) (“trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential”).

<sup>12</sup> See, e.g., *National Parks and Cons. Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

<sup>13</sup> *Lakin*, 19 FCC Rcd at 12729-30.

<sup>14</sup> See *Lakin*, 19 FCC Rcd at 12730 and n.30 (“The Bureau has consistently refused to release company-specific USF contribution data”), citing FOIA Control No. 2002-268 letter to Fred B. Campbell, Harris Wiltshire & Grannis from Joseph T. Hall (July 8, 2002); FOIA Control No. 2002-351 letter to Roy Thompson, Black Radio Network from Joseph T. Hall (Aug. 19, 2002).

<sup>15</sup> Verizon Business Reply, at 2-3. See *Lakin*, 19 FCC Rcd at 12729-30.

<sup>16</sup> See *National Park and Cons. Ass’n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976) (insight into business strategies recognized as competitive harm under FOIA Exemption 4); *Lakin*, 19 FCC Rcd at 12728 (revealing USF contributions would allow competitors to “estimate carrier revenues for specific product families, particular customers, and geographic areas”).

<sup>17</sup> Verizon Business Reply at 3.

<sup>18</sup> *Id.*

4. Wall also claims WCB failed to segregate and release non-confidential matters.<sup>19</sup> WCB, as the Bureau handling the initial FOIA request, routinely reviews all records responsive to a FOIA request to determine whether there are any segregable portions.<sup>20</sup> We have also reviewed the records to determine if there are any segregable portions that, if released, would not reveal confidential commercial information. The only segregable part of the records is the company identifying information, as Verizon Business notes, but that information is already publicly available.<sup>21</sup> Wall seeks segregation of the records to disclose “the total amount of universal service fees paid by MCI during the relevant periods, without any geographic breakdown.”<sup>22</sup> However, neither the Form 499-A filings nor the supporting worksheets contain this specific figure,<sup>23</sup> and therefore it is impossible to segregate this figure from the records.<sup>24</sup>

5. IT IS ORDERED that the application for review by John E. Wall, Jr. IS DENIED. Wall may seek judicial review of this action pursuant to 5 U.S.C. § 552(a)(4)(b).

6. The officials responsible for this action are the following Commissioners: Chairman Martin, Commissioners Copps, Adelstein and Tate.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>19</sup> AFR at 1.

<sup>20</sup> See 5 U.S.C. § 552(b) (“Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this section”); 47 C.F.R. § 0.461(f)(5) (“If there is a statutory basis for withholding part of a document only from inspection, that part will be deleted and the remainder will be made available for inspection.”).

<sup>21</sup> See Verizon Business Reply, at 3, *citing* Instructions to the Telecommunications Reporting Worksheet, Form 499-A, at 29, *reprinted at* <<http://www.fcc.gov/Forms/Form499-A/499a-2005.pdf>> (*Instructions*).

<sup>22</sup> AFR at 2.

<sup>23</sup> See *Instructions*, at 32 (“Filers do not calculate, in this Worksheet, the amounts that they must contribute. The administrators will use the revenue information on the Worksheet to calculate a funding base and individual contributions for each support mechanism.”).

<sup>24</sup> See *Students Against Genocide v. Dep’t of State*, 257 F.3d 828, 837 (D.C. Cir. 2001) *citing* *Yeager v. DEA*, 678 F.2d 315, 321 (D.C. Cir. 1982), *citing* *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975).